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Hon. Mary K. Dimke

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

JENNIFER TYLER,

Plaintiff,

v.

CHELAN COUNTY, by and through its  
agency the CHELAN COUNTY  
SHERIFF'S OFFICE, a Washington  
Municipal Corporation,

Defendants.

Case No. 2:19-cv-00172-MKD

PLAINTIFF'S OBJECTIONS TO  
MAGISTRATE JUDGE'S REPORT  
AND RECOMMENDATION (ECF  
75)

Plaintiff Jennifer Tyler, through her undersigned counsel, objects to  
Magistrate Judge James A. Goeke's Report and Recommendation filed on  
February 21, 2024 (ECF 75), as follows:

Plaintiff Tyler asks this Court to accept the premise that, as a beneficiary  
of an agreement between two others, she can accept the benefits those others

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1 want to accord her to settle their dispute. Plaintiff Tyler asks this Court to accept  
 2 the premise that such benefits may ultimately be used to reduce, or credit, or  
 3 offset any ultimate wage loss that a jury will determine as to Plaintiff Tyler's  
 4 direct damages. Plaintiff Tyler asks this Court to reject a recommendation that  
 5 it conclude that a federal Defendant can negotiate with a third party in an  
 6 ancillary proceeding to remove the federal claims and damages against that  
 7 Defendant without the federal Plaintiff being represented in that third party  
 8 proceeding, and without agreement of her federal counsel.

12 Release Language

13 This is the resolution language of a Settlement Agreement that  
 14 Defendant Chelan County negotiated with a third party Deputy Sheriff's  
 15 Association:  
 16

17  
 18 "Dismissal of Grievance. The *grievance filed by the Association*  
 19 relating to Tyler's termination is considered resolved and  
 20 dismissed. This settlement *does not settle other claims of Ms.*  
 21 *Tyler* that may be filed or in litigation."  
 22

23 ECF 40-1, ¶ 10 (emphasis added).  
 24

25 In general terms, the Magistrate Judge recommends that this Court ignore

1 this language, and the communications surrounding it, and conclude that since  
2 Plaintiff Jennifer Tyler received benefits from this resolution, that should end  
3 the damage issue in this federal claim as well. The recommendation confuses  
4 *the DSA settlement of the DSA's grievance*, which happened, with Tyler's  
5 settlement of her federal damage claims, which never happened. The confusion  
6 is perplexing, given that the Settlement Agreement's paragraph 10 explicitly  
7 makes that very distinction. ECF 40-1, ¶ 10.

### 11 **A. Background**

12 Plaintiff Tyler's complaint signals a wrongful termination claim in this  
13 action if and when the Defendant fired her: "Deputy Tyler believes it is likely  
14 that these actions will continue into the foreseeable future and may, ultimately,  
15 also include wrongful termination." ECF 1, para. 5.2. At a joint report in this  
16 case filed on February 2, 2020, ECF 9, her counsel states "Plaintiff intends to  
17 include wrongful termination in this Litigation."

18 Several months before the February 2020 joint report, an ancillary  
19 proceeding was initiated on September 4, 2019 by third party Chelan County  
20 "Deputy Sheriff's Association" (DSA), represented by its own law firm, the  
21 "Cline" law firm. This Defendant Chelan County was represented in that ancillary

1 action by its Attorney Robert Siderius. Jennifer Tyler was not represented by  
2 anyone in that proceeding. ECF 40-1, pages 5-7 (signatures with counsel where  
3 applicable). The Settlement Agreement *says* Tyler was not represented. The  
4 Agreement starts by listing *three* parties to the agreement not two—“This  
5 Settlement Agreement and Mutual Release of claims (‘Agreement’) is made by  
6 and between the *Chelan County Deputy Sheriffs Association* (‘Association’),  
7 *Jennifer Tyler* (‘Tyler’) and *Chelan County* (‘County’).” ECF 40-1 (emphasis  
8 added). Only two parties are represented by counsel—the DSA and the County.  
9 *See* signature pages ECF 40-1, pages 5-7. No one is representing Jennifer Tyler.  
10 Nowhere does the agreement say that the DSA is “representing Tyler’s interests.”  
11 The agreement is explicit that all three parties are separate. ECF 40-1, p. 1, D and  
12 E (“The Association and Tyler contested...”). The latter “Tyler contested” is also  
13 quite wrong, as the agreement states, because the agreement concerned the DSA’s  
14 grievance, not Tyler’s. ECF 40-1, ¶ 10 (“Dismissal of Grievance. The grievance  
15 filed by the Association relating to Tyler’s termination is considered resolved and  
16 dismissed.”). Nowhere did Jennifer Tyler file a wrongful termination grievance.  
17 ECF 44-3, ECF 44-4. The DSA sent its “termination grievance” to the Defendant  
18 Chelan County without copying or notice to Jennifer Tyler or to any participant in

1 this federal action. *Id.* Tyler’s present counsel finally extracted this “grievance  
 2 letter” from Chelan County’s federal counsel, who himself needed months to  
 3 figure out how and when any such “grievance” was submitted, if it ever was. ECF  
 4 44-3, ECF 44-4. There is no explanation from Chelan County or from the DSA  
 5 counsel involved as to why they communicated only with each other and why  
 6 neither of them copied Tyler or Tyler’s federal counsel Mike Kelly on this or any  
 7 communications if they were intending on usurping or resolving Tyler’s federal  
 8 claims. The evidence shows that this is likely because they never intended to do  
 9 so--“This settlement does not settle other claims of Ms. Tyler that may be filed or  
 10 in litigation.” ECF 40-1, ¶ 10.

### 15 **B. The Recommendations are Errors of Law and of Evidence.**

16 The Magistrate’s recommendations repeatedly insists on forcing the DSA  
 17 and its counsel into a role of representing Jennifer Tyler on a wrongful  
 18 termination grievance that she did not make. ECF 44-3, ECF 44-4. The  
 19 Magistrate Judge uses phrases such as how the DSA “addressed employment  
 20 grievances.... on behalf of Plaintiff.” (ECF 75, 1: 22-24, noting “employment  
 21 grievances addressed by the Association on behalf of Plaintiff.”). The Magistrate  
 22 Judge states that, e.g., “Ultimately, the Settlement Agreement was the end result  
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1 of the grievance process initiated by the Association on Plaintiff's behalf." ECF  
2 75, p. 12: 1-2, ref. ECF No. 47-2. Nothing in this record evidences that the DSA  
3 "acted on Tyler's behalf" with Tyler's authority. ECF 44-3, ECF 44-4. Nothing  
4 in any status report, ECF 11, 13, 14, 15, 16, says that the DSA was *acting* on  
5 Tyler's behalf or with her authority for her federal claims. The Settlement  
6 Agreement explicitly states that parties were resolving the DSA's grievance, not  
7 Tyler's grievance and certainly not Tyler's federal damage claim. ECF 40-1, ¶10.  
8 The evidence shows that Tyler tried to reject the settlement of the DSA's  
9 grievance, and the DSA counsel would not let her, because, it told her, it  
10 represented the DSA client, not Tyler. ECF 42 (Declaration of Tyler) and ECF  
11 42-7, Feb 26, 2021 (DSA counsel telling Tyler "We also will need to speak to  
12 Mike Morrison since the association is the client and responsible for the  
13 grievance."). There is not a shred of evidence in this record that shows either  
14 Jennifer Tyler or Tyler's former federal counsel Michael Kelly giving either the  
15 DSA or the County the authority to negotiate Tyler's federal damage claims.  
16 The objective evidence shows the exact opposite. The Settlement Agreement  
17 only resolved the DSA's grievance, not Tyler's grievance and certainly not  
18 Tyler's federal damage claims. ECF 40-1, ¶ 10 (emphasis added). The

1 represented parties to the agreement were the DSA and the County. ECF 40-1,  
2 pages 5-7.

3  
4 The Magistrate Judge recommends that this Court accept that Plaintiff  
5 Tyler's communicating with the DSA *means* she knew the DSA was  
6 "representing her," except they weren't, see ECF 42-7 ("the Association is the  
7 client"), or that Tyler knew that she was relinquishing her federal damages,  
8 except she wasn't. ECF 40-1, ¶ 10 ("This settlement *does not settle other*  
9 *claims of Ms. Tyler* that may be filed or in litigation."). ECF 40-1, ¶ 10  
10 (emphasis added).

11  
12 The Magistrate Judge writes "Plaintiff, through the *Association's* counsel,  
13 advocated for terms and asked questions she had about the agreement prior to  
14 signing it." ECF 75, p. 12. These very communications prove that these lawyers  
15 were explicitly *not* compromising Tyler's federal claims, because otherwise the  
16 Cline law firm and the County would have been rampantly violating RPC 4.2.  
17 See ECF 41, at p. 20, noting how RPC 4.2 prohibits a lawyer, in representing a  
18 client, "from communicating 'about the subject of the representation with a  
19 person the lawyer knows to be represented by another lawyer in the matter,  
20 unless the lawyer has the consent of the other lawyer or is authorized to do so  
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1 by law or a court order.’’). If nothing was done improperly by DSA and County  
2 counsel in that grievance process, then those lawyers were necessarily not  
3 settling Tyler’s federal damage claims, because they knew Tyler to be  
4 represented in this federal action. The DSA counsel made this clear to Tyler in  
5 any event--the Cline firm did not represent Jennifer Tyler, it represented only  
6 the DSA, and the DSA had the right as the client to make the decisions. ECF 42-  
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10 7.

11 The Magistrate Judge recommends that this Court conclude that “The  
12 Terms of the Settlement Agreement Bind Plaintiff Absent a Showing that the  
13 Association Breached its Duty of Fair Representation.” ECF 75. First, this is a  
14 contradiction. If the DSA ever had a duty of fair representation, then it plainly  
15 breached its duty of fair representation, because the DSA did not represent Tyler  
16 *at all*, much less fairly. See ECF 40-1 page 1, and signature pages. No lawyer can  
17 provide fair representation to someone they are not representing. But this is not  
18 Plaintiff Tyler’s argument. Plaintiff is not arguing that the DSA breached a duty  
19 of fair representation as to her wrongful termination grievance. Her argument is  
20 that *she never gave the DSA authority to represent her* in that grievance, she never  
21 knew the DSA had submitted such a grievance, and she certainly never gave the



1 DSA or the County authority to settle her federal damages claim. The Magistrate  
2 discusses how “Plaintiff’s assertion that the Association failed to grieve Plaintiff’s  
3 termination is flatly inaccurate...The Court finds no evidence that the Association  
4 breached a duty of fair representation by somehow not grieving Plaintiff’s  
5 termination.” Again, this is not the argument. Plaintiff Tyler did not ask the DSA  
6 to do *anything* about her wrongful termination, by grievance or otherwise. There is  
7 no evidence that the DSA “acted on her behalf.” ECF 44-3, 44-4. As noted by ECF  
8 9, on February 2, 2020, Tyler’s federal counsel intended to formalize the wrongful  
9 termination claims into this litigation.  
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14 The Magistrate Judge recommends that this Court accept that “Following  
15 Plaintiff’s termination, the parties sought to stay this case *to allow Plaintiff to*  
16 *complete a grievance procedure regarding Plaintiff’s termination*, as provided for  
17 in the collective bargaining agreement (“CBA”) between the Association and  
18 Chelan County. ECF No. 9.” Again, this is unsupported in all of its parts. Plaintiff  
19 Tyler did not initiate any grievance procedure over her termination. ECF 44-3, 44-  
20 4. Plaintiff made clear that she intended to include her wrongful termination claim  
21 in her federal action. ECF 9; and see ECF 11, 13, 14, 15, 16. Nothing in any status  
22 report says that Plaintiff Tyler was allowing the DSA to negotiate her federal  
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1 termination claim in that union process, and nothing in the final status report, ECF  
 2 16, removes any such claim from this proceeding. All language about what was  
 3 happening in the DSA process with this Defendant is regarding the DSA's  
 4 grievance, not this federal damage claim. Nowhere does any report filed in this  
 5 case say that *Jennifer Tyler* agreed to anything, a fact noted in the Magistrate's  
 6 ruling:

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 8  
 9 “Finally, on April 5, 2021, the parties reported that the ‘*Chelan County*  
 10 *and the Chelan County Sheriff's Officers' Guild* have come to a final  
 11 resolution in the Guild/County arbitration related to the Collective  
 12 Bargaining Agreement issues tied to this matter.’

13  
 14 ECF 75, p. 5, 21-24, ref ECF No. 14 at 1-2 (emphasis added). Jennifer Tyler is  
 15 not named as a party agreeing to anything, and “Collective Bargaining issues  
 16 tied to this matter” are not identified.

17  
 18 The Magistrate Judge does cite to a sentence in a status report on August  
 19 10, 2020, showing the confusion about what the DSA and County attorneys were  
 20 doing in their proceeding, noting how federal counsel here stated “With regard to  
 21 the arbitration, both parties are represented by other counsel, not involved in this  
 22 case, and the exact status of the arbitration in that matter is not currently  
 23 known.” ECF 75, p. 5/17: 13-14, ref. ECF No. 11 at 2. This report shows only that

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1 federal counsel plainly did not understand that Tyler was not represented in that  
2 process. ECF 42-7; ECF 40-1. These counsel had no idea what the DSA and the  
3 County were doing. But it is not in legitimate dispute that no one was representing  
4 Tyler in the DSA process. ECF 40-1, pages 5-7.

5  
6 The Magistrate Judge repeatedly references the DSA's "right" to represent  
7 Tyler, but this is plain error. The DSA did *not* represent Tyler. See ECF 40-1,  
8 pages 5-7. The DSA represented "(Mike) Morrison." ECF 42-7. Concluding that  
9 the DSA had the right to represent Tyler is irrelevant--it didn't do so. See ECF 40-  
10 1 signatures.

11  
12 Moreover, the DSA *had* no such right, and that is why it did *not* represent  
13 her. The Magistrate Judge recommends that "As set forth above, Plaintiff is  
14 functionally a party by virtue of the Association's *obligation to represent her*  
15 *interests* pursuant to the CBA." ECF 75, p. 12: 10-13 (emphasis added). The DSA  
16 did not represent Tyler's interests however, it represented its own interests. See  
17 ECF 40-1, signature pages. The Magistrate Judge holds that "The Association  
18 Grieved Plaintiff's Wrongful Termination Claim Consistent with the  
19 Association's Authority." The DSA has no "authority" to negotiate for *future wage*  
20 *loss* attendant to a wrongful termination federal claim. The DSA is only allowed

1 to bargain for “all full time and regular part-time fully commissioned deputies.”  
2 ECF 75, Nte 5, ref. ECF No. 47-1, at ¶ 1.1. Tyler was neither a full-time or a regular  
3 part-time deputy after she was fired. That is why the DSA did not represent her.  
4 When the DSA and Chelan County initiated a “wrongful termination grievance,”  
5 it did so without authority to *represent* Tyler, and it didn’t thereafter represent her.  
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8 The Magistrate Judge ignores the explicit language of the Collective  
9 Bargaining Agreement (CBA)’s *restriction* on the DSA right to bargain for  
10 employees that are no longer employees. Tyler was no longer a Chelan County  
11 employee or a member of the DSA on September 4, 2019 when the DSA filed  
12 its grievance. She had been terminated. The Magistrate Judge construes the  
13 DSA’s authority under its CBA in a footnote, after noting how “the  
14 Association’s role in wrongful termination is not explicitly set out.” It then  
15 construes an authority contrary to the very language it cites. The CBA allows  
16 the DSA to address “wages, hours and working conditions for *certain members*  
17 *of the Chelan County Sheriff’s Office*.” ECF 47-1, preamble. Jennifer Tyler was  
18 not a member of the Chelan County Sheriff’s Office on September 4, 2019, when  
19 the DSA initiated its grievance. ECF 44-4. Future wage loss as a damage  
20 component of a wrongful termination tort claim are not “wages, hours and  
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1 working conditions” for an employee. The CBA consistently notes, as did the  
2 Magistrate Judge, that the DSA is “the ‘sole bargaining agent for wages, hours  
3 and working conditions for all full time and regular part-time fully  
4 commissioned deputies. ECF No. 47-1, at ¶ 1.1.” ECF 75, nte 5. Jennifer Tyler  
5 was neither a full time or regular part-time employee on September 4, 2019. The  
6 Magistrate Judge ignores this limitation language, and instead goes to paragraph  
7 2.1 of the CBA, recommending that since Chelan County retains “all of the  
8 vested management's inherent rights, powers, authority and functions,” and  
9 since it can “discharge employees for just cause,” then somehow a provision  
10 defining the County’s exclusive authority means that the DSA can “grieve”  
11 anything about that authority. That is simply not what the CBA says--in its  
12 preamble, or in its Article 1, or anywhere else. The Magistrate Judge  
13 recommends that this Court conclude that “Discharge without good cause  
14 violates a provision of the CBA, so meets the definition of a grievance.” ECF  
15 75, nte. 5. Again, that is not what the paragraph says, and it is a non-sequitur.  
16 The DSA is restricted in its duties and its role as defined at the outset of the CBA  
17 by preamble and by Article 1. ECF 47-1.

28 The Magistrate Judge recommends that “The Settlement Agreement

1 includes a ‘Mutual Release’ paragraph, wherein Plaintiff ‘fully and forever  
2 releases and discharges the County. . .from all liability for any and all wage  
3 claims relating to her employment with Chelan County.’” ECF 75, p.6: 11-14,  
4 ref. ECF No. 40-1 at 4, ¶ 11. Paragraph 10 preceding that clause makes clear  
5 that the agreement only resolves the DSA grievance, not anything about Tyler’s  
6 federal litigation. ECF 40-1, ¶ 10. This apparent inconsistency is not noted,  
7 much less analyzed; no effort is made to construe such inconsistencies against  
8 the drafters of this agreement, and none of the attorneys involved in preparing  
9 that agreement have testified in support of the County’s position here.  
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14 In sum, this Court should reject and modify the Magistrate Judge’s  
15 recommendation. The Magistrate Judge’s recommendation simply fails to  
16 address the plain terms of the Release Agreement, and the objective evidence of  
17 communications, all of which make clear that what was resolved was the DSA’s  
18 grievance, not Tyler’s federal damage claims. The amounts negotiated between  
19 the DSA and Chelan County to resolve a DSA grievance should be held to be  
20 potential offsets or credits against any future damages determined by a jury, but  
21 not abrogation of damage claims. Anything other than this result ignores  
22 paragraph 10 of the Release.  
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1  
2  
3  
4 DATED this 6<sup>th</sup> day of March, 2024.

5 MARY SCHULTZ LAW, P.S.  
6

7 /s/Mary Schultz

8 Mary Schultz, WSBA #14198

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 6<sup>th</sup> day of March, 2024, filed and served the foregoing document to all counsel and parties using the Eastern District of Washington U.S. District Court C/ECF system, which will automatically serve notice to all attorneys who have appeared in this action and registered with the electronic filing system. Plaintiff is not aware of any non-CM/ECF participants.

Dated this 6<sup>th</sup> day of March, 2024.

MARY SCHULTZ LAW, P.S.

/s/Mary Schultz

Mary Schultz, WSBA # 14198

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